

STATE ENERGY PROGRAM NOTICE 05-1
EFFECTIVE DATE: January 7, 2005

SUBJECT: PROGRAM YEAR 2005 STATE ENERGY PROGRAM FORMULA GRANT GUIDANCE

PURPOSE:

To establish grant guidance and management information for the State Energy Program formula grants for program year (PY) 2005.

SCOPE:

The provisions of this guidance apply to States, Territories and the District of Columbia (hereinafter "States") applying for formula grant financial assistance under the Department of Energy's (DOE) State Energy Program (SEP). Much of the information in this guidance is summarized from the volumes of the Code of Federal Regulations (CFR) applicable to SEP, namely 10 CFR part 420 (covering the State Energy Program) and 10 CFR part 600 (the DOE Financial Assistance Rules). The CFR can be accessed at:

<http://www.gpoaccess.gov/cfr/index.html>

These regulations are the official sources for program requirements.

PROGRAM PRIORITIES IN PY 2005:

Carryover Funds:

Budgetary accountability will continue to be a program emphasis, with particular attention on reducing large amounts of carryover.

States carrying forward 25% or more of the prior year's federal formula allocation plus any prior year carryover funds will need to address the situation in their PY 2005 State Plan. Regional Offices (RO's) will continue to monitor compliance with those carryover plans. DOE Headquarters (HQ) will be working with the RO's over the course of the year to help ensure that those balances are reduced in a timely manner.

21st Century Strategic Plan:

DOE supports the continued implementation of the SEP Strategic Plan for the 21st Century which was developed collaboratively with SEP state and federal representatives and was published in February, 2000. We strongly encourage States to design and/or reinforce State plan activities that address the three key goals identified in that Plan. The three key goals are:

1. Maximize energy, environmental and economic benefits through increased collaboration at the Federal, State and community level.
2. Increase market acceptance of energy efficiency and renewable energy technologies, practices, and products.
3. Use innovative approaches to reach market segments and meet policy goals not typically addressed by market-based solutions.

Detailed guidance on some recommended optional activities that would particularly address each of these key goals was issued in the November, 2000 SEP Strategic Plan Implementation Plan. The Implementation Plan is available at:

http://www.eere.energy.gov/buildings/state_energy/strategic_implementation.html

Since the SEP Strategic Plan for the 21st Century was published in February, 2000, many things have changed with regard to energy. Oil prices have fluctuated significantly, the reliability of the electricity grid has been tested and energy supply security has been recognized as a major issue for both the federal government and the States. States have embraced the potential of energy efficiency and renewable energy technologies to help comply with the requirements of the Clean Air Act. Additionally, a growing number of States have adopted renewable energy portfolio standards. In view of these developments, in PY 2005 DOE will work closely with States to update the SEP Strategic Plan for the 21st Century, establishing long-term measurable goals for the program. The effort will begin in early 2005.

SEP Metrics:

In January 2003, the Oak Ridge National Laboratory (ORNL) published a report estimating annual energy and cost savings for the SEP. Based on data from States who completed the NASEO/ORNL Enumeration Indicators Survey, ORNL found that each \$1 of SEP funding results in \$7.23 in annual cost savings for the citizens and businesses served by the States.

ORNL broadened the scope of the SEP metrics effort by developing a methodology to estimate savings from several additional program measure areas. Fifty-five States and Territories responded to the second survey. ORNL's second report is scheduled to be available by the end of February, 2005.

Upcoming Distribution of Stripper Well Funds:

On May 21, 2004, DOE's Office of Hearings and Appeals (OHA) announced the availability of approximately \$280 million in oil overcharge funds. The Final Notice outlining the procedures that govern this distribution was published in the Federal Register on that date and is also available on OHA's website. OHA mailed notifications to all prior successful applicants in crude oil refund proceedings, informing them of their eligibility to apply for a share of these funds. According to OHA, this group includes most States, though not always the State Energy Office.

The application period ended on December 31, 2004. Distribution of funds is expected to begin in February, 2005. After the funds are distributed there may be a small amount (+- \$7 million) remaining for distribution to all the States according to the Stripper Well formula.

Additional information is available on OHA's website, www.oha.doe.gov and inquiries can be submitted electronically to: crudeoilrefunds@hq.doe.gov.

LEGISLATION:

SEP is authorized under PL 94-385, PL 94-163, PL 95-619, PL 94-580, PL 101-440, and PL 102-486. All grant awards made under this program must comply with applicable legislation.

REGULATIONS:

SEP is governed by its program regulations (10 CFR part 420) published in the Federal Register on July 8, 1996, and amended in the Federal Registers dated May 14, 1997, August 24, 1999, and May 1, 2000, and the DOE Financial Assistance Rules (10 CFR part 600).

Building Codes:

In order to reflect current approved energy codes, the building code definitions and references in 10 CFR 420 are being updated as listed below.

The following Definitions are updated:

ASHRAE/IESNA Standard 90.1-1999 means the building design standards published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, and the Illuminating Engineering Society of North America titled "Energy Standard for Buildings Except Low-Rise Residential Buildings," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in Sec. 420.6(b)

Model Energy Code definition and references are deleted.

The following Reference Standards are updated:

Sec 420.6(b)

- (1) The American Society of Heating, Refrigerating and Air-Conditioning Engineers(ASHRAE), 1791 Tullie Circle, N.E, Atlanta, Georgia 30329 (404 636-8400); The Illuminating Engineering Society of North America(IESNA), 120 Wall Street, Floor 17, New York, New York 10005, (212) 248-5000; ASHRAE/IESNA Standard 90.1-1999, entitled Standard for Buildings Except Low- Rise Residential Buildings, IBR approved for Sec 420.2 and Sec 420.15.

(2) The International Code Council (ICC), 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041, (703) 931-4533: (i) The International Energy Conservation Code 2000, IBR approved for Sec 420.2 and Sec.420.15.

1.0 FUNDING

1.1 GENERAL FUNDING:

PY 2005 funding for SEP, requiring DOE approval for expenditure, can come from three sources: (1) Federally appropriated funds; (2) Warner, EXXON and similar petroleum violation escrow funds; and (3) Stripper Well and other oil overcharge funds (including Texaco) which are subject to Stripper settlement rules.

1.2 FORMULA ALLOCATION: PY 2005 allocations for SEP consist of \$44 million in federal funds appropriated in FY 2005. The SEP rule (section 420.11(b)(4)(ii)) requires that the most recent available data be used in the population and energy consumption portions of the formula for allocating funds above the \$25.5 million base amount. Attachment 1 provides the final SEP State formula allocations for PY 2005. Population data as of July 1, 2004, the most recent provided by the U.S. Census Bureau, was used to calculate these allocations.

(See section 420.11 for the allocation process.)

1.3 MATCH:

States must contribute (in cash, in kind, or both) an amount no less than 20% of their total Federal formula award.

(See section 420.12 regarding match.)

1.4 PETROLEUM VIOLATION ESCROW (PVE) ACTIVITIES FUNDED UNDER SEP:

Depending on the authority of PVE funding, new and modified PVE-funded SEP initiatives must be approved in writing, prior to implementation, by the Regional Office. Stripper Well activities require review by DOE Headquarters.

2.0 APPLICATIONS FOR SEP GRANTS

2.1 APPLICATION PACKAGE:

The President's Management Agenda states, "Agencies will allow applicants for Federal grants to apply for and ultimately manage grant funds online through a common website, simplifying grants management and eliminating redundancies..." The Grants.gov system will produce a simple, unified "storefront" for all customers of Federal grants to electronically find opportunities, apply for and manage grants. It will improve the quality, coordination, effectiveness and efficiency of operations for grant makers and grant recipients.

DOE is working with the other federal agencies to implement Grants.gov. **The system is not, however, expected to be available for use by the State Energy Offices in PY 2005.** PY 2005 applications should be submitted as in prior years, through WinSAGA or by hard copy and a diskette or CD. The DOE Regional Offices are always available to answer specific questions and to provide guidance on application procedures.

In preparation for Grants.gov the SEP application and reporting forms were revised to simplify and streamline those processes. Final OMB approval is expected shortly, but States should plan to use the current forms for their PY 2005 applications. Required forms, along with the various Certifications and Assurances, are available in "Word" format at the following DOE National Energy Technology Laboratory (NETL) website:

<http://www.netl.doe.gov/business/index.html>

Required application forms include:

- Standard Form 424, Application for Federal Assistance
- Federal Assistance Budget Information Form, DOE F 4600.4
- Budget Explanation Form, GO-PF20(a) (available at the Golden Field Office website: <http://procurement.go.doe.gov/Forms/Forms%20Index.htm>)
- Master File (if revised since last submission)

All applicants should have current Certifications and Assurances on file with NETL, or are required to submit:

- US DOE Assurance of Compliance, DOE 1600.5
- Certifications Regarding Lobbying; Debarment; Suspension and Other Responsibility Matters; and Drug-free Workplace Requirements; FA-Certs
- Disclosure of Lobbying Activities, SF-LLL, if applicable

For the Annual File section of the State Plan, Narrative Activity Worksheets should be submitted for each planned PY05 SEP Formula Grant Activity.

States not applying via WinSAGA (i.e., those that are filing paper copies) should check with their DOE Regional Office regarding the format and forms to be used in their applications.

States should provide a narrative outlining any amendments to activities carried over from the previous year's plan, plus all new program activities. For States using WinSAGA, this information should be included in the "Summary of Changes from Last Plan" section of the Application's Check List Page. For those States submitting paper copies, include this information in the application's cover letter. Activity Worksheets should be included for each new activity. Please check with your Regional Office if you have questions about how this should be done.

(See section 420.13 for application requirements.)

APPLICATION DUE DATE: Applications for SEP formula grants should be submitted by each State on a date established by its DOE Regional Office.

2.3 REQUESTS FOR EXTENSION: If a State determines that it cannot meet the submission date for the formula award portion of SEP, a written request from the Governor must be submitted to the Regional Office 15 days prior to the application due date. The request should specify the time period needed and the reasons for the delay. An extension will be granted if reasonable justification is provided.

(See section 420.13(c).)

3.0 STATE PLAN

3.1 STATE PLAN CONTENTS:

The State Plan consists of an Annual File, covering the activities that the State intends to undertake during the year of the grant, which must be updated each year to reflect that year's activities, and the Master File, covering items that generally do not change from year to year, which would need to be updated only when a change occurs.

The Annual File section of the State Plan includes the required information for each program activity for which the State requests financial assistance for a given year, including budget information and milestones for each activity, and the intended scope and goals to be attained either qualitatively or quantitatively.

The Master File includes a description of the energy goals that the State intends to achieve. The description should include, wherever practicable, an explanation of how implementing the plan will conserve energy, how the State will measure progress toward attaining the goal, how the program activities represent a strategy to achieve these goals; an explanation of how the plan satisfies the minimum criteria for the required (mandatory) activities; and a plan for State monitoring that describes how the State conducts the administrative and programmatic oversight for programs implemented by other agencies within the State, contractors employed by the State, or subrecipients of financial assistance from the State. If a State has completed certain mandatory activities, this may also be indicated in the Master File - separate Activity Worksheets need not be maintained for each one.

(See section 420.13 for more specific requirements on State Plans.)

3.2 STATE PLAN ACTIVITY CODES:

States shall identify program activities under the function and activity categories developed for WinSAGA. Use of the function and activities categories assists DOE in tracking grant-funded activities and gathering information on SEP. DOE is often required to provide analyses, justifications and recommendations based on the information provided by the States. The use of the function and activity categories also assists in developing performance metrics for each activity. The function and activity categories can be found in the Annual File section of WinSAGA.

3.3 MANDATORY REQUIREMENTS:

The following activities and details on compliance are required in each State Plan:

- (a) establish mandatory lighting efficiency standards for public buildings;
- (b) promote carpools, vanpools; and public transportation;
- (c) incorporate energy efficiency criteria into procurement procedures;
- (d) implement mandatory thermal efficiency standards for new and renovated buildings, or in States that have delegated such matters to political subdivisions, adopt model codes for local governments to mandate such measures;
- (e) permit right turns at red traffic lights and left turns from a one-way street onto a one-way street at a red light after stopping; and
- (f) ensure effective coordination among various local, State and Federal energy efficiency, renewable energy and alternative transportation fuel programs within the State.

(See section 420.15 for more specific requirements on mandatory activities.)

3.4 OPTIONAL PROGRAM ACTIVITIES:

States may wish to consider the following program areas for inclusion in their State Plans:

- Programs of public education to promote energy conservation.
- Programs to increase transportation energy efficiency, including programs to accelerate the use of alternative transportation fuels and hybrid vehicles for State government fleets, taxis, mass transit, and privately owned vehicles. Contact your Regional Office for related information on the Clean Cities Program.
- Programs that encourage the introduction of energy saving technologies in the industry, buildings, transportation and utility sectors and encourage State and industry partnerships that develop and demonstrate advances in energy efficiency and clean technologies. Contact your Regional Office for related information on the Inventions and Innovation (I&I) program.
- Programs for financing energy efficiency and renewable energy capital investments, projects and programs, which may include loan programs and performance contracting programs for leveraging additional public and private sector funds, and programs which allow rebates, grants, or other incentives for the purchase and installation of eligible energy efficiency and renewable energy measures in public or nonprofit buildings owned and operated by a State, a political subdivision of a State or an agency or instrumentality

of a State, or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, including public and private non-profit schools and hospitals, and local government buildings.

- Programs for encouraging and for carrying out energy audits with respect to buildings and industrial facilities (including industrial processes) within the State.
- Programs to promote the adoption of integrated energy plans which provide for periodic evaluation of a State's energy needs, available energy resources (including greater energy efficiency) and energy costs; and utilization of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost.
- Programs to promote energy efficiency in residential housing, such as programs for development and promotion of energy efficiency rating systems for newly constructed housing and existing housing so that consumers can compare the energy efficiency of different housing; and programs for the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing.
- Programs to identify unfair or deceptive acts or practices which relate to the implementation of energy efficient and renewable resource energy measures and to educate consumers concerning such acts or practices.
- Programs to modify patterns of energy consumption so as to reduce peak demands for energy and improve the efficiency of energy supply systems, including electricity supply systems.
- Programs to promote energy efficiency as an integral part of economic development and environmental planning conducted by State, local, or other governmental entities or by energy utilities.
- Programs to provide training and education to building designers and contractors to promote building energy efficiency.
- Programs for the development of building retrofit standards and regulations.
- Programs to provide support for feasibility studies for the utilization of renewable energy and energy efficiency resource technologies.
- Programs to encourage the use of renewable energy technologies.
- Programs that partner with other State agencies to leverage additional funds, such as public benefits funds and State and local investments in Clear Air Act compliance.

(See section 420.17 for more specific requirements on optional activities.)

3.5 STATE ENERGY EMERGENCY PLANS:

In conjunction with the SEP State Plan, States are required to file an energy emergency plan detailing implementation strategies for dealing with energy emergencies. In today's environment, it is important that these plans be kept up to date. For States that desire to update their plan, model guidelines have been developed for incorporating energy efficiency and renewable energy technologies into a State's energy emergency plan. Contact your Regional Office for a copy of those guidelines.

3.6 EXPENDITURE PROHIBITIONS AND LIMITATIONS:

States are prohibited from using SEP financial assistance:

- (a) for construction, such as construction of mass transit systems and exclusive bus lanes, or for the construction or repair of buildings or structures;
- (b) to purchase land, a building or structure or any interest therein;
- (c) to subsidize fares for public transportation;
- (d) to subsidize utility rate demonstrations or State tax credits for energy conservation or renewable energy measures; or
- (e) to conduct or purchase equipment to conduct research, development or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available.

No more than 20 percent of the financial assistance awarded to the State for this program shall be used to purchase office supplies, library materials, or other equipment whose purchase is not otherwise prohibited.

Demonstrations of commercially-available energy efficiency or renewable energy techniques and technologies are permitted and are not subject to the construction prohibition or the 20% on equipment, and direct purchase limitations.

A State may use regular or revolving loan mechanisms to fund SEP services which are consistent with the SEP rule and which are included in the approved State plan. Loan repayments and interest on loan funds may be used only for activities which are consistent with the rule and are included in the State's approved plan.

A State may use funds for the purchase and installation of equipment and materials for energy efficiency measures and renewable energy measures, subject to the following:

- use must be included in State's approved plan (and if PVE funds are used, the use must be consistent with any judicial or administrative terms and conditions imposed upon State use of such funds).
- such use is limited to no more than 50% of all funds allocated by the State to SEP in any given year, regardless of source, except that this limitation shall not include regular and revolving loan programs funded with PVE funds. States may request a waiver of the 50% limit from DOE for good cause, and should check with their DOE Regional Office about the process for doing so, if they are considering this. For regular and revolving loan funds, loan documents shall ensure repayment of principal and interest within a reasonable period of time, and shall not include provisions for loan forgiveness.

Funds may be used to supplement and no funds may be used to supplant weatherization activities under the Weatherization Assistance Program for Low-Income Persons.

(See section 420.18 for more detailed expenditure prohibitions and limitations.)

4.0 REPORTING:

The following three reports for the SEP Formula Grants should be submitted by each State in accordance with the reporting checklist established by its Regional Office:

- Financial Status Report, Standard Form 269
- Federal Cash Transactions Report, Standard Form 272
- Program Status Report

The Standard Forms are available in “Word” format at the following DOE NETL website:
<http://www.netl.doe.gov/business/index.html>.

The Program Status Report form is contained in WinSAGA. DOE strongly encourages States to submit the Program Status Report electronically through WinSAGA.

For all aspects of the SEP formula grant application process, States are encouraged to consult with their DOE Regional Office if they have questions or need additional information, or copies of forms, etc.

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Attachments: State Formula Allocations